

1 Jason Flanders (Bar No. 238007)  
2 Email: jrf@atalawgroup.com  
3 J. Thomas Brett (Bar. No. 315820)  
4 Email: jtb@atalawgroup.com  
5 AQUA TERRA AERIS LAW GROUP LLP  
6 4030 Martin Luther King Jr. Way  
7 Oakland, CA 94609  
8 Phone: (202) 9016

7 Barak J. Kamelgard (Bar No. 298822)  
8 Email: Barak@lawwaterkeeper.org  
9 Benjamin A. Harris (Bar No. 313193)  
10 Email: ben@lawwaterkeeper.org  
11 LOS ANGELES WATERKEEPER  
12 360 E 2nd Street Suite 250  
13 Los Angeles, CA 90012  
14 Phone: (310) 394-6162

13 *Attorneys for Plaintiff*  
14 LOS ANGELES WATERKEEPER

15 **UNITED STATES DISTRICT COURT**  
16 **CENTRAL DISTRICT OF CALIFORNIA**

17  
18 LOS ANGELES WATERKEEPER, a  
19 California non-profit association,

20 Plaintiff,

21 v.

22 ASTRO PAK CORPORATION, a Delaware  
23 corporation,

24  
25 Defendant.  
26  
27  
28

Civil Case No.:

**COMPLAINT FOR  
DECLARATORY AND  
INJUNCTIVE RELIEF AND  
CIVIL PENALTIES**

**(Federal Water Pollution Control  
Act, 33 U.S.C. §§ 1251 *et seq.*)**

1 Los Angeles Waterkeeper (“LA Waterkeeper” or “Plaintiff”), by and through its  
2 counsel, hereby alleges:

3 **I. JURISDICTION AND VENUE**

4 1. This is a civil suit brought under the citizen suit enforcement provision of  
5 the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 *et seq.* (“Clean Water Act”  
6 or “CWA”). *See* 33 U.S.C. § 1365. This Court has subject matter jurisdiction over the  
7 parties and this action pursuant to 33 U.S.C. § 1365(a)(1) and 28 U.S.C. §§ 1331 and  
8 2201 (an action for declaratory and injunctive relief arising under the Constitution and  
9 laws of the United States).

10 2. On April 13, 2023, LA Waterkeeper issued a 60-day notice letter (“April  
11 Notice Letter”), to the registered agent for service of process (40 C.F.R. § 135.2(a)(2))  
12 for Astro Pak Corporation (“Astro Pak” or “Defendant”), as the owners and operators of  
13 the Facility under its control. The Notice Letter informed Defendant of its violations of  
14 California’s Storm Water Permit for Discharges of Storm Water Associated with  
15 Industrial Activities (*National Pollutant Discharge Elimination System (NPDES) General*  
16 *Permit No. CAS000001, State Water Resources Control Board Water Quality Order No.*  
17 *2014-0057-DWQ*) and amended by Order No. 2015-0122 –DWQ and incorporating: 1)  
18 Federal Sufficiently Sensitive Test Method Ruling; 2) Total Maximum Daily Loads  
19 (“TMDL”) Implementation Requirements; and 3) Statewide Compliance Options  
20 Incentivizing On-Site or Regional Storm Water Capture and Use, and as subsequently  
21 amended by Order 2018-0028-DWQ (effective July 1, 2020) (hereafter the “Storm Water  
22 Permit”) and the Clean Water Act at the industrial facility located at 12201 Pangborn  
23 Ave., Downey, CA 90241 with Waste Discharger Identification Number (“WDID”) 4  
24 19I002927 (hereafter, the “Facility”).

25 3. The Notice Letter informed Defendant of Plaintiff’s intent to file suit against  
26 Defendant to enforce the Storm Water Permit and the Clean Water Act.

27 4. In addition to the Notice Letter sent on April 13, 2023 to Defendant’s agent  
28 for service of process, on March 24, 2023 Plaintiff sent a Notice Letter (“March Notice

Letter”) to Astro Pak’s Chief Executive Officer, EHS Manager. The March Notice Letter was also sent to the Acting Administrator of the United States Environmental Protection Agency (“EPA”), the Acting Administrator of EPA Region IX, the Executive Director of the State Water Resources Control Board (“State Board”), and the Executive Officer of the Regional Water Quality Control Board, Los Angeles Region, (“Regional Board”) as required by Section 505(b) of the CWA, 33 U.S.C. § 1365(b)(1)(A). The March and April Notice Letters are attached hereto as **Exhibits A & B**, respectively, and are fully incorporated herein by reference.

5. More than sixty (60) days have passed since both the March and April Notice Letters were served on the Defendant and the State and Federal agencies. Plaintiff is informed and believes, and thereon alleges, that neither the EPA nor the State of California has commenced or is diligently prosecuting an action to redress the violations alleged in the Notice Letter and in this complaint. *See* 33 U.S.C. § 1365(b)(1)(B). This action is not barred by any prior administrative penalty under Section 309(g) of the CWA, 33 U.S.C. § 1319(g).

6. Venue is proper in the Central District of California pursuant to Section 505(c)(1) of the CWA, 33 U.S.C. § 1365(c)(1), because the sources of the violations are located within this judicial district.

7. Plaintiff seeks relief for Defendant’s substantive and procedural violations of the Storm Water Permit and the Clean Water Act resulting from industrial activities at the Facility.

## **II. INTRODUCTION**

8. With every significant rainfall event, hundreds of millions of gallons of polluted rainwater, originating from industrial operations such as the Facility referenced herein, pour into the storm drains and local waterways. The consensus among regulatory agencies and water quality specialists is that storm water pollution accounts for more than half of the total pollution entering marine and river environments each year. These surface waters, known as Receiving Waters, are ecologically sensitive areas. Although

1 pollution and habitat destruction have drastically diminished once abundant and varied  
2 fisheries, these waters are still essential habitat for dozens of fish and bird species as well  
3 as macro-invertebrate and invertebrate species. Storm water and non-storm water contain  
4 sediment, heavy metals, such as aluminum, iron, chromium, copper, lead, mercury,  
5 nickel, and zinc, as well as, high concentrations of nitrate and nitrite, and other pollutants.  
6 Exposure to polluted storm water harms the special aesthetic and recreational  
7 significance that the surface waters have for people in the surrounding communities. The  
8 public's use of the surface waters exposes many people to toxic metals and other  
9 contaminants in storm water and non-storm water discharges. Non-contact recreational  
10 and aesthetic opportunities, such as wildlife observation, are also impaired by polluted  
11 discharges to the Receiving Waters.

12 9. High concentrations of total suspended solids ("TSS") degrade optical water  
13 quality by reducing water clarity and decreasing light available to support photosynthesis.  
14 TSS has been shown to alter predator-prey relationships (for example, turbid water may  
15 make it difficult for fish to hunt prey). Deposited solids alter fish habitat, aquatic plants,  
16 and benthic organisms. TSS can also be harmful to aquatic life because numerous  
17 pollutants, including metals and polycyclic aromatic hydrocarbons, are absorbed onto  
18 TSS. Thus, higher concentrations of TSS result in higher concentrations of toxins  
19 associated with those sediments. Inorganic sediments, including settleable matter and  
20 suspended solids, have been shown to negatively impact species richness, diversity, and  
21 total biomass of filter feeding aquatic organisms on bottom surfaces. Storm water  
22 discharged with high pH can damage the gills and skin of aquatic organisms and cause  
23 death at levels above 10 standard units. The pH scale is logarithmic, and the solubility of  
24 a substance varies as a function of the pH of a solution. A one-whole-unit change in SU  
25 represents a tenfold increase or decrease in ion concentration. If the pH of water is too  
26 high or too low, the aquatic organisms living within it will become stressed or die.

27 10. This complaint seeks a declaratory judgment, injunctive relief, the  
28 imposition of civil penalties, and the award of costs, including attorney and expert

1 witness fees, for Defendant's substantive and procedural violations of the Storm Water  
2 Permit and the Clean Water Act resulting from Defendant's operations at the Facility.<sup>1</sup>

3 11. Plaintiff specifically alleges violations regarding Defendant's discharge of  
4 pollutants from the Facility into waters of the United States; violations of the monitoring,  
5 reporting, and best management practice requirements; and violations of other procedural  
6 and substantive requirements of the Storm Water Permit and the Clean Water Act, are  
7 ongoing and continuous.

8 **III. PARTIES**

9 **A. Los Angeles Waterkeeper**

10 12. LA Waterkeeper is a non-profit 501(c)(3) public benefit corporation  
11 organized under the laws of the State of California. LA Waterkeeper maintains an office  
12 at 360 E. Second Street, Suite 250, Los Angeles, California 90012.

13 13. LA Waterkeeper's members live and/or recreate in and around Los Angeles  
14 and Long Beach area. LA Waterkeeper is dedicated to the preservation, protection, and  
15 defense of the environment, wildlife, and natural resources of local surface waters. To  
16 further these goals, LA Waterkeeper actively seeks federal and state agency  
17 implementation of the Clean Water Act and, where necessary, directly initiates  
18 enforcement actions on behalf of itself and others.

19 14. LA Waterkeeper members work, own homes and live in Los Angeles  
20 County and use and enjoy the waters near the Facility, including the San Gabriel River  
21 and the bordering parks, pathways, golf, courses and athletic fields, and further  
22 downstream, the San Gabriel River Estuary, Seal Beach, and the Pacific Ocean the  
23 ("Receiving Waters") for biking, boating, kayaking, viewing wildlife, walking, running,  
24 and horseback riding.

25 15. Discharges of polluted storm water and non-storm water from the Facility  
26 degrade water quality and harm aquatic life in the San Gabriel River, Seal Beach, and the  
27

28 <sup>1</sup> The Facility is fully described in Section V below.

1 Pacific Ocean, and impair LA Waterkeeper's members use and enjoyment of those  
2 waters.

3 16. The violations of the Storm Water Permit and Clean Water Act at the  
4 Facility are ongoing and continuous, including but not limited to Defendant's discharge  
5 of polluted storm water from the Facility. Thus, the interests Plaintiff's members have  
6 been, are being, and will continue to be adversely affected by Defendant's failure to  
7 comply with the Storm Water Permit and the Clean Water Act.

8 17. Continuing commission of the acts and omissions alleged above will  
9 irreparably harm Plaintiff and its members, for which they have no plain, speedy or  
10 adequate remedy at law.

11 18. The interests of LA Waterkeeper's members have been, are being, and will  
12 continue to be adversely affected by Defendant's failure to comply with the Clean Water  
13 Act and the Storm Water Permit. The relief sought herein will redress the harm to  
14 Plaintiff caused by Defendant's activities.

15 **B. The Owners and/or Operators of the Facility**

16 19. Plaintiff is informed and believes, and thereon alleges, that Astro Pak  
17 maintains its headquarters at 270 Baker Street East, Suite 100, Costa Mesa, California  
18 92626.

19 20. Plaintiff is informed and believes, and thereon alleges, that Astro Pak  
20 Corporation is the owner and operator of the Facility.

21 21. Plaintiff is informed and believes, and thereon alleges, that Astro Pak  
22 Corporation is an active Delaware corporation registered in California.

23 22. Plaintiff is informed and believes, and thereon alleges, that the name and  
24 address of the Registered Agent for Astro Pak is CSC Lawyers Incorporating Service  
25 National Registered Agents, c/o Amanda Garcia, 330 N. Brand Boulevard, Suite 700,  
26 Glendale, California 91203.

27 23. LA Waterkeeper refers to Defendant Astro Pak and its management herein  
28 as the "Owners/Operators" of the Facility.

1 **IV. STATUTORY BACKGROUND**

2 **A. The Clean Water Act**

3 24. Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a), prohibits the  
4 discharge of any pollutant into waters of the United States unless the discharge complies  
5 with various enumerated sections of the CWA. Among other things, Section 301(a)  
6 prohibits discharges not authorized by, or in violation of, the terms of a National  
7 Pollutant Discharge Elimination System (“NPDES”) permit issued pursuant to Section  
8 402 of the CWA, 33 U.S.C. §§ 1311(a) and 1342(b).

9 25. Section 402(p) of the CWA establishes a framework for regulating  
10 municipal and industrial storm water discharges under the NPDES program. 33 U.S.C. §  
11 1342(p). States with approved NPDES permit programs are authorized by Section 402(p)  
12 to regulate industrial storm water discharges through individual permits issued to  
13 dischargers and/or through the issuance of a single, statewide general permit applicable to  
14 all industrial storm water dischargers. 33 U.S.C. § 1342.

15 26. Section 301(b) of the Clean Water Act requires that all point source  
16 dischargers, including those discharging polluted storm water, must achieve technology-  
17 based effluent limitations by utilizing Best Available Technology Economically  
18 Achievable (“BAT”) for toxic and nonconventional pollutants and the Best Conventional  
19 Pollutant Control Technology (“BCT”) for conventional pollutants. *See* 33 U.S.C. §  
20 1311(b).

21 27. The Clean Water Act requires point source discharges of pollutants to  
22 navigable waters be regulated by an NPDES permit. 33 U.S.C. §§ 1311(a) and 1342.; *see*  
23 40 C.F.R. § 122.26(c)(1).

24 28. The “discharge of a pollutant” means, among other things, “any addition of  
25 any pollutant to navigable waters from any point source.” 33 U.S.C. § 1362(12); *see* 40  
26 C.F.R. § 122.2.

27 29. The term “pollutant” includes “dredged spoil, solid waste, incinerator  
28 residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological



1 materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar  
2 dirt and industrial, municipal, and agricultural waste discharged into water.” 33 U.S.C. §  
3 1362(6); *see* 40 C.F.R. § 122.2.

4 30. The term “point source” means any “discernible, confined and discrete  
5 conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well,  
6 discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel  
7 or other floating craft, from which pollutants are or may be discharged.” 33 U.S.C. §  
8 1362(14); *see* 40 C.F.R. § 122.2.

9 31. “Navigable waters” means “Waters of the United States.” 33 U.S.C. §  
10 1362(7); 33 CFR § 328.3.

11 32. Section 505(a)(1) and Section 505(f) of the Clean Water Act provide for  
12 citizen enforcement actions against any “person” who is alleged to be in violation of an  
13 “effluent standard or limitation . . . or an order issued by the Administrator or a State with  
14 respect to such a standard or limitation.” *See* 33 U.S.C. §§ 1365(a)(1) and 1365(f).

15 33. The Defendant is a “person[s]” within the meaning of Section 502(5) of the  
16 Clean Water Act, 33 U.S.C. § 1362(5).

17 34. An action for injunctive relief is authorized under Section 505(a) of the  
18 CWA, 33 U.S.C. § 1365(a).

19 35. Pursuant to Section 309(d) of the Act (33 U.S.C. § 1319(d)) and the  
20 Adjustment of Civil Monetary Penalties for Inflation (40 C.F.R. § 19.4), each separate  
21 violation of the CWA occurring after December 20, 2015 commencing five years prior to  
22 the date of Notice of Violation and Intent to File Suit subjects Astro Pak to a penalty of  
23 up to \$64,618 per day per violation.

24 36. Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d), permits  
25 prevailing or substantially prevailing parties to recover litigation costs, including  
26 attorneys’ fees, experts’ fees, and consultants’ fees.

27 **B. California’s Storm Water Permit**

28 37. Section 402(b) of the CWA, 33 U.S.C. § 1342(b), allows each state to



1 administer its own EPA-approved NPDES permit program for regulating the discharge of  
2 pollutants, including discharges of polluted storm water. States with approved NPDES  
3 permit programs are authorized by Section 402(b) to regulate industrial storm water  
4 discharges through individual NPDES permits issued to dischargers and/or through the  
5 issuance of a statewide general NPDES permit applicable to all industrial storm water  
6 dischargers. *See id.*

7 38. Pursuant to Section 402 of the CWA, 33 U.S.C. § 1342, the Administrator of  
8 the EPA has authorized California to issue NPDES permits, including general NPDES  
9 permits. California has designated the State Board and the Regional Boards to administer  
10 its NPDES program. *City of Rancho Cucamonga v. Regional Water Quality Control Bd.*,  
11 135 Cal. App. 4th 1377, 1380-81 (2006). In California, the State Board is charged with  
12 regulating pollutants to protect California's water resources. *See* Cal. Water Code §  
13 13001. The Storm Water Permit is a statewide general NPDES permit issued by the State  
14 Board pursuant to Section 402 of the CWA, 33 U.S.C. §§ 1342(b), (p), and 40 C.F.R. §  
15 123.25. Violations of the Storm Water Permit are also violations of the CWA. Storm  
16 Water Permit, Section XXI(A).

17 39. Section 303 of the CWA, 33 U.S.C. § 1313, requires states to adopt Water  
18 Quality Standards, including water quality objectives and beneficial uses for navigable  
19 waters of the United States. 33 U.S.C. § 1313(a). The CWA prohibits discharges from  
20 causing or contributing to a violation of such state Water Quality Standards. *See* 33  
21 U.S.C. § 1311(b)(1)(C); 40 C.F.R. §§ 122.4(a), (d); 40 C.F.R. § 122.44(d)(1).

22 40. The State Board elected to issue a statewide general permit for industrial  
23 discharges. The State Board issued the Storm Water Permit on or about November 19,  
24 1991, modified the Storm Water Permit on or about September 17, 1992, and reissued the  
25 Storm Water Permit on or about April 17, 1997, pursuant to Section 402(p) of the Clean  
26 Water Act, 33 U.S.C. § 1342(p).

27 41. On July 1, 2015, the current Storm Water Permit became effective and was  
28 issued as *NPDES General Permit No. CAS000001 State Water Resources Control Board*

1 *Water Quality Order No. 2014-0057-DWQ*. Storm Water Permit, Section I(A) (Finding  
2 4).

3 42. On November 6, 2018, the State Board amended the Storm Water Permit  
4 with Order No. No. 2015-0122 –DWQ, incorporating: 1) Federal Sufficiently Sensitive  
5 Test Method Ruling; 2) TMDL Implementation Requirements; and 3) Statewide  
6 Compliance Options Incentivizing On-Site or Regional Storm Water Capture and Use  
7 (“2018 Permit Amendment”).

8 43. In order to discharge storm water lawfully in California, industrial  
9 dischargers must secure coverage under the Storm Water Permit and comply with its  
10 terms, or obtain and comply with an individual NPDES permit. Storm Water Permit,  
11 Section I.A (Findings 8, 12). Prior to beginning industrial operations, dischargers are  
12 required to apply for coverage under the Storm Water Permit by submitting a Notice of  
13 Intent to Comply with the Terms of the Storm Water Permit to Discharge Storm Water  
14 Associated with Industrial Activity (“NOI”) to the State Board. Storm Water Permit,  
15 Section I.A (Finding 17), Section II.B.

16 **C. The Storm Water Permit’s Discharge Prohibitions, Effluent**  
17 **Limitations, and Receiving Water Limitations**

18 44. The Storm Water Permit contains certain absolute prohibitions. The Storm  
19 Water Permit prohibits the direct or indirect discharge of materials other than storm water  
20 (“non-storm water discharges”), which are not otherwise authorized by an NPDES  
21 permit, to the waters of the United States. Storm Water Permit, Discharge Prohibition  
22 III(B).

23 45. Section V(A) of the Storm Water Permit requires dischargers to reduce or  
24 prevent pollutants associated with industrial activity in storm water discharges through  
25 the implementation of Best Available Technology Economically Achievable (“BAT”) for  
26 toxic or non-conventional pollutants, and Best Conventional Pollutant Control  
27 Technology (“BCT”) for conventional pollutants. Toxic pollutants are listed at 40 C.F.R.  
28 § 401.15 and include copper, lead, and zinc, among others. Conventional pollutants are

1 listed at 40 C.F.R. § 401.16 and include biological oxygen demand, TSS, oil and grease  
2 (“O&G”), pH, and fecal coliform.

3 46. Discharge Prohibition III(C) of the Storm Water Permit prohibits storm  
4 water discharges that cause or threaten to cause pollution, contamination, or nuisance.

5 47. Under the CWA and the Storm Water Permit, dischargers must employ Best  
6 Management Practices (“BMPs”) that constitute BAT and BCT to reduce or eliminate  
7 storm water pollution. 33 U.S.C. § 1311(b). Storm Water Permit, Section V(A). EPA has  
8 developed benchmark levels (“Benchmarks”) that are objective guidelines to evaluate  
9 whether a permittee’s BMPs achieve compliance with the BAT/BCT standards. *See* Final  
10 National Pollutant Discharge Elimination System (NPDES) General Permit for Storm  
11 Water Discharges From Industrial Activities (“Multi-Sector Permit”), 80 Fed. Reg.  
12 34,403, 34,405 (June 16, 2015); Multi-Sector Permit, 73 Fed. Reg. 56,572, 56,574 (Sept.  
13 29, 2008); Multi-Sector Permit, 65 Fed. Reg. 64,746, 64,766-67 (Oct. 30, 2000).

14 48. The EPA’s most recent, 2021 Parameter Benchmark Values for the  
15 following parameters, among others, are as follows: TSS—100 mg/L; aluminum—1.1  
16 mg/L; nitrate plus nitrite as nitrogen (“N+N”)—0.68 mg/L; lead—0.082 mg/L; cyanide—  
17 0.022 mg/L; copper—0.00519 mg/L; zinc—0.12 mg/L; pH—6.0-9.0 s.u; biological  
18 oxygen demand—30 mg/L; and chemical oxygen demand—120 mg/L. Additional EPA  
19 Benchmarks for heavy metals, which depend on the hardness of the receiving water, also  
20 apply to storm water discharges from the Facility.

21 49. The Storm Water Permit contains Numeric Action Levels (“NALs”) that  
22 generally mirror the 2008 EPA Benchmark Values. *See* Storm Water Permit, Section  
23 I(M)(Finding 62). Annual NALs, not accounting for water hardness, for the following  
24 parameters are: pH—6.0 – 9.0 standard units; TSS—100 mg/L; copper—0.0332 mg/L;  
25 zinc—0.26 mg/L; nickel—1.02 mg/L; lead—.262 mg/L; cyanide—0.022 mg/L; iron—  
26 1.0 mg/L; N+N—0.68 mg/L; O&G—15 mg/L; and aluminum—0.75 mg/L; biological  
27 oxygen demand—30 mg/L; and chemical oxygen demand—120 mg/L. Storm Water  
28 Permit, Table 2 at 47. Instantaneous Maximum NALs, for the following parameters are:

1 pH—6.0 – 9.0 s.u.; TSS—400mg/L; O&G—25mg/L. *Id.*

2 50. An annual NAL exceedance occurs when the average of all the analytical  
3 results for a parameter from samples taken within a reporting year exceeds the annual  
4 NAL value for that parameter. An instantaneous maximum NAL exceedance occurs  
5 when two (2) or more analytical results from samples taken for any single parameter  
6 within a reporting year exceed the instantaneous maximum NAL value or are outside of  
7 the instantaneous maximum NAL range for pH. Stormwater Permit Section XII.A.

8 51. Receiving Water Limitation VI(B) of the Storm Water Permit prohibits  
9 storm water discharges from adversely impacting human health or the environment.

10 52. Discharges with pollutant levels that exceed levels known to adversely  
11 impact aquatic species and the environment are violations of the Storm Water Permit's  
12 Receiving Water Limitation. Storm Water Permit, Section VI(B).

13 53. Receiving Water Limitation VI(A) of the Storm Water Permit prohibit storm  
14 water discharges that cause or contribute to an exceedance of any "applicable Water  
15 Quality Standard in a Statewide Water Quality Control Plan or the applicable Regional  
16 Board's Basin Plan."

17 54. Water Quality Standards ("WQS") are pollutant concentration levels  
18 determined by the State Board, the various Regional Boards, and the EPA to be  
19 protective of the beneficial uses of the waters that receive polluted discharges.

20 55. The State of California regulates water quality through the State Board and  
21 the nine Regional Boards. Each Regional Board maintains a separate Water Quality  
22 Control Plan which contains WQS for water bodies within its geographic area.

23 56. The State Water Quality Control Board, Los Angeles Region, has issued the  
24 Water Quality Control Plan for the Los Angeles Region ("the Basin Plan") to establish  
25 water quality objectives, implementation plans for point and non-point source discharges,  
26 prohibitions, and to further statewide plans and policies. The Basin Plan sets forth water  
27 quality objectives for dissolved metals such as aluminum, arsenic, and mercury. Basin  
28 Plan, Table 3-8. The Basin Plan states that the waters shall not receive sediment,

1 settleable materials, or suspended materials that cause nuisance or adversely affect the  
2 waters' beneficial uses. *Id.* at 3-44. The Basin Plan also provides that "Toxic pollutants  
3 shall not be present at levels that will bioaccumulate in aquatic life to levels which are  
4 harmful to aquatic life or human health." *Id.* at 3-29.

5 57. The Basin Plan's WQS also require a narrower pH range of 6.5 – 8.5 pH  
6 units for inland surface waters such as the San Gabriel River and its watershed.

7 58. The Basin Plan specifies potential and existing beneficial uses for the San  
8 Gabriel River including municipal and domestic supply, industrial process and service  
9 supply, warm freshwater habitat, wildlife habitat, and habitat for rare, threatened, or  
10 endangered species. Basin Plan, Table 2-1. The Basin Plan further specifies beneficial  
11 uses for the San Gabriel River Estuary. *Id.*

12 59. Surface waters that cannot support the Beneficial Uses of those waters listed  
13 in the Basin Plan are designated as impaired water bodies pursuant to Section 303(d) of  
14 the Clean Water Act, 33 U.S.C. §1313(d).

15 60. Reach 2 of the San Gabriel River, into which the Facility discharges, is  
16 impaired for lead, cyanide, and temperature. It has been proposed in the Draft California  
17 2024 Integrated Report that Reach 2 will also be listed as impaired for aluminum and  
18 indicator bacteria.

19 61. Reach 1 of the San Gabriel River is impaired for pH and temperature. It has  
20 been proposed in the Draft California 2024 Integrated Report that Reach 1 will also be  
21 listed as impaired for DDT, O&G, and indicator bacteria. Lower reaches of the San  
22 Gabriel River and the San Gabriel River Estuary are also listed for impairments on the  
23 Section 303(d) list; specifically, copper, dioxin, indicator bacteria, nickel, and dissolved  
24 oxygen, and it has been proposed in the Draft California 2024 Integrated Report that they  
25 will also be listed as impaired for chlordane, chlorine, temperature, and toxicity. The  
26 Receiving Waters are impaired, and Defendant's discharges of pollutants above the WQS  
27 contributes to the continued impairment of the receiving waters' beneficial uses.

28 62. In addition, EPA has promulgated WQS for toxic priority pollutants in all

1 California water bodies (“California Toxics Rule” or “CTR”), which apply to the  
2 Receiving Waters, unless expressly superseded by the Basin Plan. 40 C.F.R. § 131.38.  
3 The CTR sets forth lower numeric limits for zinc and other pollutants; CTR criteria can  
4 be as low as, 0.065 mg/L for lead, 0.013 mg/L for copper, 0.022 mg/L for cyanide, 0.47  
5 mg/L for nickel, and 0.12 mg/L for zinc in freshwater surface waters with water hardness  
6 calculation of 50 mg/L.<sup>2</sup>

7 63. The CTR includes further numeric criteria set to protect human health and  
8 the environment in the State of California. *See* Establishment of Numeric Criteria for  
9 Priority Toxic Pollutants for the State of California Factsheet, EPA-823-00-008 (April  
10 2000), available at: [https://www.epa.gov/wqs-tech/water-quality-standards-](https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state)  
11 [establishment-numeric-criteria-priority-toxic-pollutants-state](https://www.epa.gov/wqs-tech/water-quality-standards-establishment-numeric-criteria-priority-toxic-pollutants-state).

12 64. Discharges with pollutant levels in excess of the CTR criteria, the Basin  
13 Plan, and/or other applicable WQS are violations of the Storm Water Permit’s Receiving  
14 Water Limitations. *See* Storm Water Permit, Section VI(A).

15 **D. The Storm Water Permit’s Numeric Effluent Limitations**

16 65. Effective July 1, 2020, the Storm Water Permit establishes numeric effluent  
17 limitations (“NELs”) for facilities that discharge storm water associated with industrial  
18 activities into water bodies that have approved TMDLs set forth in Storm Water Permit,  
19 Attachment E. TMDLs in place for pollutants discharged from industrial facilities to the  
20 San Gabriel River include metals and selenium. Storm Water Permit, Attachment E,  
21 Table E-1. Discharges from the Facility are subject to the San Gabriel River TMDL  
22 requirements for metals, which include the following NELs: lead—0.166 mg/L. Storm  
23 Water Permit, Attachment E, Table E-2.

24 66. An exceedance of an NEL constitutes a violation of the General Permit.  
25 General Permit, Attachment C at 5. An NEL exceedance occurs when two (2) of more  
26

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27 <sup>2</sup> The CTR numeric limits, or “criteria,” are expressed as dissolved metal concentrations  
28 in the CTR, but the Storm Water Permit requires permittees to report their sample results  
as total metal concentrations. *See* Storm Water Permit, Attachment H at 18.



1 analytical results from samples taken for any single parameter within a reporting year  
2 exceed the instantaneous maximum NEL value listed in Table E-2 of Attachment E to the  
3 General Permit. *Id.*

4 **E. The Storm Water Permit's Storm Water Pollution Prevention Plan**  
5 **Requirements**

6 67. Dischargers must develop and implement a Storm Water Pollution  
7 Prevention Plan ("SWPPP") at the time industrial activities begin. Storm Water Permit,  
8 Sections I(I)(Finding 54) and X(B). The SWPPP must identify and evaluate sources of  
9 pollutants associated with industrial activities that may affect the quality of storm water  
10 and authorized non-storm water discharges from the facility. Storm Water Permit,  
11 Section X(G). The SWPPP must identify and evaluate sources of pollutants associated  
12 with industrial activities that may affect the quality of storm water and authorized non-  
13 storm water discharges from the facility. Storm Water Permit, Section X(G). The SWPPP  
14 must identify and implement site-specific BMPs to reduce or prevent pollutants  
15 associated with industrial activities in storm water and authorized non-storm water  
16 discharges. Storm Water Permit, Section X(H). The SWPPP must include BMPs that  
17 achieve pollutant discharge reductions attainable via BAT and BCT. Storm Water Permit,  
18 Sections I(D) (Finding 32) and X(C).

19 68. The SWPPP must include: a narrative description and summary of all  
20 industrial activity, potential sources of pollutants, and potential pollutants; a site map  
21 indicating the storm water conveyance system, associated points of discharge, direction  
22 of flow, areas of actual and potential pollutant contact, including the extent of pollution-  
23 generating activities, nearby water bodies, and pollutants control measures; a description  
24 of storm water management practices; a description of the BMPs to be implemented to  
25 reduce or prevent pollutants in storm water discharges and authorized non-storm water  
26 discharges; the identification and elimination of non-storm water discharges; the location  
27 where significant materials are being shipped, stored, received, and handled, as well as  
28 the typical quantities of such materials and the frequency with which they are handled; a



1 description of dust and particulate-generating activities; and a description of individuals  
2 and its current responsibilities for developing and implementing the SWPPP. Storm  
3 Water Permit, Section X.

4 69. The objectives of the SWPPP are to identify and evaluate sources of  
5 pollutants associated with industrial activities that may affect the quality of storm water  
6 discharges, to identify and implement site-specific BMPs to prevent the exposure of  
7 pollutants to storm water, and to reduce or prevent the discharge of polluted storm water  
8 from industrial facilities. Storm Water Permit, Section X.

9 70. The Storm Water Permit requires the discharger to evaluate the SWPPP on  
10 an annual basis and revise it as necessary to ensure compliance with the Storm Water  
11 Permit. Storm Water Permit, Section X(A)-(B). The Storm Water Permit also requires  
12 that the discharger conduct an annual comprehensive site compliance evaluation that  
13 includes a review of all visual observation records, inspection reports and sampling and  
14 analysis results, a visual inspection of all potential pollutant sources for evidence of, or  
15 the potential for, pollutants entering the drainage system, a review and evaluation of all  
16 BMPs to determine whether the BMPs are adequate, properly implemented and  
17 maintained, or whether additional BMPs are needed, and a visual inspection of equipment  
18 needed to implement the SWPPP. Storm Water Permit, Section X(B) and Section XV.

19 71. The SWPPP and site maps must be assessed annually and revised as  
20 necessary to ensure accuracy and effectiveness. Storm Water Permit, Sections I(J)  
21 (Finding 55) and X(B)(1). Significant SWPPP revisions must be certified and submitted  
22 by the discharger via the State Board's electronic database, called the Storm Water  
23 Multiple Application & Report Tracking System ("SMARTS") within 30 days. Storm  
24 Water Permit, Section X(B)(2). Dischargers are required to submit revisions to the  
25 SWPPP that are determined to not be significant every three (3) months in the reporting  
26 year. *Id.* at Section X(B)(3); Storm Water Permit, Fact Sheet, Section II(I)(1).

**F. The Storm Water Permit's Monitoring Implementation Program Requirements**

72. The Storm Water Permit requires facility operators to develop and implement a Monitoring Implementation Plan ("MIP"). Storm Water Permit Sections X(I) and XI(A)–(D). The MIP must ensure that storm water discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Storm Water Permit. Storm Water Permit Section XI. The MIP must ensure that practices at the facility to prevent or reduce pollutants in storm water and authorized non-storm water discharges are evaluated and revised to meet changing conditions at the facility, including revision of the SWPPP. *Id.*

73. Further objectives of the MIP are to ensure that BMPs have been adequately developed and implemented, revised if necessary, and to ensure that storm water and non-storm water discharges comply with the Storm Water Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. Storm Water Permit, Section XI.

74. The MIP aids in the implementation and revision of the SWPPP and measures the effectiveness of BMPs to prevent or reduce pollutants in storm water discharges. *Id.*

75. The Storm Water Permit requires facility operators to monitor and sample storm water discharges to ensure that the facility is complying with the terms of the permit. Storm Water Permit, Sections I(J) (Findings 55–56) and XI.

76. Section XI(A)(4) of the Storm Water Permit requires that the MIP shall be revised as necessary to ensure compliance with the Storm Water Permit.

77. Section XI(A) of the Storm Water Permit requires dischargers to conduct monthly visual observations of storm water discharges.

78. Section XI(A)(2) of the Storm Water Permit requires dischargers to document the presence of any floating and suspended materials, O&G, discolorations, turbidity, or odor in the discharge, and the source of any pollutants in storm water

1 discharges from the facility. Dischargers are required to maintain records of observations,  
2 observation dates, discharge locations observed, and responses taken to reduce or prevent  
3 pollutants from contacting storm water discharges. *See* Storm Water Permit, Section  
4 XI(A)(3). The Storm Water Permit also requires dischargers to revise the SWPPP as  
5 necessary to ensure that BMPs are effectively reducing and/or eliminating pollutants at  
6 the facility. Storm Water Permit, Section X(B)(1).

7 79. The Storm Water Permit requires dischargers to visually observe and collect  
8 samples of storm water discharges from all locations where storm water is discharged.  
9 Storm Water Permit, Section XI(B)(4).

10 80. Section XI(B)(1) of the Storm Water Permit requires sampling if a  
11 precipitation event produces a discharge for at least one drainage area, and it is preceded  
12 by forty-eight (48) hours with no discharge from any drainage area (“Qualifying Storm  
13 Event” or “QSE”).

14 81. Section XI(B)(2) of the Storm Water Permit requires dischargers to collect  
15 and analyze storm water samples from two (2) QSEs within the first half of each  
16 reporting year (July 1 to December 31), and two (2) QSEs within the second half of each  
17 reporting year (January 1 to June 30).

18 82. Section XI(B)(6) of the Storm Water Permit requires dischargers to analyze  
19 storm water samples for TSS, O&G, pH, and additional parameters identified by the  
20 discharger on a facility-specific basis that serve as indicators of the presence of all  
21 industrial pollutants identified in the pollutant source assessment, additional applicable  
22 industrial parameters related to receiving waters with 303(d) listed impairments or  
23 approved TMDLs, and additional parameters required by the Regional Water Board.

24 83. All facilities are required to sample storm water for TSS, O&G, and pH. The  
25 Facility’s NOI classifies the Facility under Standard Industrial Classification Code  
26 (“SIC”) 3471, covering electroplating, plating, polishing, anodizing and coloring. Under  
27 SIC Code 3471, Astro Pak is also required to sample storm water for iron, aluminum,  
28 zinc, and N+N. Facilities must also sample and analyze for additional parameters

1 identified on a facility-specific basis to reflect a facilities' pollutant source assessment, as  
2 required by the Storm Water Permit and the Regional Board, and additional parameters  
3 related to receiving waters with 303(d) listed impairments. Storm Water Permit, Section  
4 XI(B)(6) When self-reporting storm water sample results, Defendant samples for those  
5 pollutants listed above in this paragraph.

6 84. Section XVI of the Storm Water Permit requires dischargers to submit an  
7 annual report with a Compliance Checklist that indicates whether a Discharger complies  
8 with, and has addressed all applicable requirements of the permit, an explanation for any  
9 non-compliance of requirements within the reporting year, as indicated in the Compliance  
10 Checklist, an identification, including page numbers and/or Sections, of all revisions  
11 made to the SWPPP within the reporting year, and the date(s) of the Annual Evaluation.

12 **G. Exceedance Response Action Requirements**

13 85. When the 2015 Permit became effective on July 1, 2015, all permittees were  
14 in "Baseline status." See 2015 Permit, Section XII(B). A permittee's Baseline status for  
15 any given parameter changes to "Level 1 status" if sampling results indicate a NAL  
16 exceedance for that same parameter. *See* Storm Water Permit, Section XII(C).

17 86. Level 1 status commences on July 1 following the reporting year during  
18 which the exceedance(s) occurred. *See* Storm Water Permit, Section XII(C). By October  
19 1 following commencement of Level 1 status, permittees are required to: complete an  
20 evaluation, with the assistance of a Qualified Industrial Stormwater Practitioner  
21 ("QISP"), of the industrial pollutant sources at the facility that are or may be related to  
22 the NAL exceedance(s); and identify in the evaluation the corresponding BMPs in the  
23 SWPPP and any additional BMPs and SWPPP revisions necessary to prevent future NAL  
24 exceedances and to comply with the requirements of Storm Water Permit. *See* Storm  
25 Water Permit Section XII(C)(1)(a)-(c).

26 87. Although the evaluation may focus on the drainage areas where the NAL  
27 exceedance(s) occurred, all drainage areas shall be evaluated. *See* Storm Water Permit,  
28 Section XII(C)(1)(c).

1           88. Based upon this Level 1 status evaluation, the permittee is required to, as  
2 soon as practicable but no later than January 1 following commencement of Level 1  
3 status, revise the SWPPP as necessary and implement any additional BMPs identified in  
4 the evaluation, certify and submit via SMARTS a Level 1 Exceedance Response Action  
5 (“ERA”) Report prepared by a QISP that includes the a summary of the Level 1 ERA  
6 Evaluation and a detailed description of the SWPPP revisions and any additional BMPs  
7 for each parameter that exceeded an NAL. *See* Storm Water Permit, Section  
8 XII(C)(2)(a)(i)-(ii).

9           89. The permittee in Level 1 status must also certify and submit via SMARTS  
10 the QISP’s identification number, name, and contact information (telephone number, e-  
11 mail address) no later than January 1 following commencement of Level 1 status. *See*  
12 Storm Water Permit, Section XII(C)(2)(a)(iii).

13           90. A permittee’s Level 1 status for a parameter will return to Baseline status  
14 once a Level 1 ERA Report has been completed, all identified additional BMPs have  
15 been implemented, and results from four (4) consecutive qualified storm events that were  
16 sampled subsequent to BMP implementation indicate no additional NAL exceedances for  
17 that parameter. *See* Storm Water Permit, Section XII(C)(2)(b).

18           91. A permittee’s Level 1 status for any given parameter shall change to Level 2  
19 status if sampling results indicate an NAL exceedance for that same parameter while the  
20 Discharger is in Level 1. Level 2 status commences on July 1 following the reporting  
21 year during which the NAL exceedance(s) occurred. *See* Storm Water Permit, Section  
22 XII(D).

23           92. A Discharger in Level 2 status shall submit a Level 2 ERA Action Plan  
24 prepared by a QISP that addresses each new Level 2 NAL exceedance by January 1  
25 following the reporting year during with the NAL exceedances occurred. On January 1 of  
26 the reporting year following the submittal of the Level 2 ERA Action Plan, a Discharger  
27 shall certify and submit a Level 2 ERA Technical Report prepared by a QISP to  
28 SMARTS. *See*, Storm Water Permit, Section XII(D).

1 **V. STATEMENT OF FACTS**

2 **A. Astro Pak Facility Site Description, Industrial Activities, and Pollutant**  
3 **Sources at the Facility**

4 93. Defendant operates an industrial facility located at 12201 Pangborn Avenue,  
5 Downey, California 90241, in close proximity to the San Gabriel River. The Facility's  
6 NOI states that the site is approximately 2.2 acres, with approximately 1.4 acres of  
7 industrial area exposed to storm water. The Facility's primary industrial purpose is  
8 precision cleaning and passivation services. The Facility's SWPPP, last updated  
9 September 2020 ("Facility SWPPP"), states that the Facility operates Monday through  
10 Friday, 8:00 am to 5:00 pm, except Astro Pak holidays.

11 94. Plaintiff is informed and believes, and thereon alleges, that industrial  
12 activities at the site, many of them conducted outdoors and exposed to storm water  
13 include, but are not limited to, storage of chemicals and materials, field services truck  
14 parking and equipment storage, deionized (DI) water conditioning, and transformers, gas-  
15 fired boilers, and air compressors. These activities occur at following areas identified in  
16 the Facility SWPPP: chemical drum bays, chemical storage lockers, corrosive spill pallet  
17 enclosure, dispensing drums, hazardous waste storage areas, empty container storage,  
18 truck loading area at warehouse dock, container transfer areas, hose, pips, and equipment  
19 storage areas, truck and trailer parking, trash bins, roofs and pavements. The main  
20 processing areas are in the clean room building and shop building.

21 95. Truck and forklift traffic, commuter vehicle traffic and parking also occur at  
22 the Facility.

23 96. Aluminum and metal shavings, chips, dust and particulates, and chemical  
24 sediment from the industrial activities at the Facility can accumulate around the Facility.  
25 Pollutants from these activities accumulate at the Facility and contribute to pollutants in  
26 storm water. Pollutants of concern at the Facility include but are not limited to, O&G,  
27 pH, TSS, N+N, iron, zinc, and aluminum.

28 97. The Facility SWPPP also lists biological oxygen demand and chemical



1 oxygen demand in its pollutant source assessment.

2 98. The industrial areas and associated activities generate and release pollutants  
3 at the Facility which are discharged in storm water to the City of Downey municipal  
4 storm drain on Pangborn Avenue, then into the San Gabriel River and Pacific Ocean  
5 downstream.

6 99. The San Gabriel River is located less than 0.1 miles to the east of the  
7 Facility.

8 100. Pursuant to the Facility SWPPP, storm water is conveyed to concrete swales  
9 that flow to one of two storm water catch basin drains, where (during sampling events) it  
10 is sampled prior to discharge to the Municipal Separate Storm Sewer System. Catch  
11 Basins 001 and 002, each consists of a concrete sump approximately 3 on each side and 4  
12 feet deep. A stainless-steel collar below the steel grate directs water flow through a filter  
13 insert and then into underground connected to the infiltration system.

14 101. Pursuant to the Facility's SWPPP, the infiltration system is designed to  
15 infiltrate the projected drainage volume produced by either a maximum of a 0.75-inch  
16 total storm event or a continuing 0.2-inch per hour storm event.

17 102. The San Gabriel River, and the Pacific Ocean are waters of the United  
18 States, and which, upon information and belief, receive stormwater discharges from the  
19 Facility.

20 **B. San Gabriel River**

21 103. LA Waterkeeper's members utilize the Receiving Waters for recreation,  
22 scientific study through pollution and habitat monitoring and restoration activities.

23 104. The San Gabriel River watershed provides critical habitat for species,  
24 including many that are endangered, threatened, rare, and endemic to Southern  
25 California. These species include flora and fauna, including one of the largest runs of  
26 steelhead trout in southern California and the largest remaining population of arroyo  
27 chub.  
28



**C. The Facility Storm Water Permit Coverage**

105. SMARTS lists the current Facility WDID number for the Facility as 4 19I002927 and coverage under the Storm Water Permit as “Active.”

106. The NOI for the Facility lists the Receiving Water as the San Gabriel River.

107. Via search of the SMARTS database, Plaintiff obtained the Facility SWPPP for the Facility, last revised in September 2020.

108. Plaintiff is informed and believes, and thereon alleges, that Astro Pak has been operating with an inadequately developed or implemented SWPPP in violation of Storm Water Permit requirements since at least April 13, 2018. Astro Pak has failed to evaluate the effectiveness of its BMPs and to revise its SWPPP as necessary, resulting in the Facility’s unlawful effluent limitation violations.

109. Plaintiff is informed and believes, and thereon alleges, that the Facility Owners/Operators failed to implement any additional BMPs as required by the Storm Water Permit. As such, the Owners and/or Operators are in daily violation of this requirement of the Storm Water Permit.

110. Plaintiff is informed and believes, and thereon alleges, that Facility Owners/Operators have failed to implement BMPs that achieve compliance with Storm Water Permit or the CWA.

111. Plaintiff is informed and believes, and thereon alleges, that pollutants associated with the Facility include, but are not limited to: aluminum, zinc, nitrate + nitrite, pH, TSS, O&G, iron, biological oxygen demand and chemical oxygen demand.

112. Plaintiff is informed and believes, and thereon alleges, that Astro Pak has failed to implement the minimum BMPs required by the Storm Water Permit, including good housekeeping requirements; preventive maintenance requirements; spill and leak prevention and response requirements; material handling and waste management requirements; erosion and sediment controls; employee training and quality assurance; and record keeping. Storm Water Permit, Sections X(H)(1)(a)–(g). The Facility SWPPP does not contain a description of any erosion and sediment control BMPs that are in

1 place.

2 113. Plaintiff is informed and believes, and thereon alleges, that Astro Pak has  
3 further failed to implement sufficient advanced BMPs necessary to reduce or prevent  
4 discharges of pollutants in its storm water sufficient to meet the BAT/BCT standards,  
5 including: exposure minimization BMPs; containment and discharge reduction BMPs;  
6 treatment control BMPs; or other advanced BMPs necessary to comply with the Storm  
7 Water Permit's effluent limitations. Storm Water Permit, Section X(H)(2) According to  
8 the Facility SWPPP, the Facility's advanced BMPs are limited to an infiltration system to  
9 minimize, but not eliminate, discharges from the Facility.

10 114. Plaintiff is informed and believes, and thereon alleges, that there are also  
11 insufficient minimum BMPs implemented, such as good housekeeping.

12 115. Plaintiff is informed and believes, and thereon alleges, that Defendant has  
13 failed to collect sufficient storm water samples for analyses, in violation of the Storm  
14 Water Permit, since at least April 13, 2018.

15 116. Plaintiff is informed and believes, and thereon alleges, that storm water  
16 discharges containing excess levels of TSS, N+N, zinc, iron, pH, and aluminum occur  
17 each time storm water discharges from Facility in violation of the Storm Water Permit  
18 Sections III(C)–(D) and VI(A)–(B).

19 117. Plaintiff is informed and believes, and thereon alleges, that the repeated and  
20 significant exceedances of NALs and Benchmark Levels demonstrate that the  
21 Owners/Operators have failed and continue to fail to develop and/or implement BMPs to  
22 prevent the exposure of pollutants to storm water and to prevent discharges of polluted  
23 storm water and non-storm water from the Facility.

24 118. Plaintiff is informed and believes, and thereon alleges, that the  
25 Owners/Operators have failed and continue to fail to evaluate the effectiveness of its  
26 BMPs and adequately revise the Facility SWPPP, despite repeated and significant  
27 concentrations of pollutants in Facility's storm water discharges. Further, Defendant has  
28 failed to make changes to the Facility's training programs, or make any other changes

1 based upon events that would signal a need for required revisions or alteration of  
2 practices.

3 119. Plaintiff is informed and believes, and thereon alleges, that pollutants,  
4 including but not limited to those referenced herein, have been and continue to be tracked  
5 throughout the Facility's operation areas.

6 120. Plaintiff is informed and believes, and thereon alleges, that the  
7 Owners'/Operators' failure to properly address pollutant sources and pollutants results in  
8 the exposure of pollutants associated with its industrial activities to precipitation, and that  
9 this results in discharges of polluted storm water from Facility and into local waterways  
10 in violation of the Storm Water Permit and/or the CWA.

11 121. Plaintiff is informed and believes, and thereon alleges, that the  
12 Owners'/Operators' failure to properly address these pollutants and its sources results in  
13 the exposure of pollutants to precipitation, which carries these pollutants with storm  
14 water flows from Facility into the Receiving Waters.

15 **D. Storm Water Discharges from the Facility**

16 122. As discussed above and as detailed in the Facility SWPPP, storm water flow  
17 is directed to a set of catch basins, Catch Basin 001 and Catch Basin 002 before it is  
18 discharged to the City of Downey municipal storm drain on Pangborn Avenue, then into  
19 the San Gabriel River and Pacific Ocean downstream.

20 123. Plaintiff is informed and believes, and thereon alleges, that Astro Pak has  
21 self-reported NAL exceedances from the Facility over the past five (5) reporting years.

22 **E. The Facility's Storm Water Discharges to the Receiving Waters Contain**  
23 **Elevated Levels of Pollutants**

24 124. Plaintiff is informed and believes, and thereon alleges, that pollutants from  
25 the Facility discharge with storm water to the City of Downey municipal storm drains,  
26 then into the San Gabriel River and Pacific Ocean downstream.

27 125. Plaintiff is informed and believes, and thereon alleges, that the  
28 Owners'/Operators' failure to properly address these pollutants and its sources results in

1 the exposure of pollutants to precipitation, which carries these pollutants with storm  
2 water flows the San Gabriel River, its estuary, and the Pacific Ocean, all waters of the  
3 United States.

4 126. Storm water discharges containing pollutants including, but not limited to,  
5 heavy metals such as zinc, lead, and copper, and iron adversely affect the aquatic  
6 environment.

7 127. Samples of storm water discharges collected at the Facility contain  
8 pollutants including TSS, zinc, N+N, aluminum, and pH in excess of levels known to  
9 adversely impact aquatic species and the environment, federal regulations, WQS,  
10 Benchmarks, and/or the CTR (zinc, ) in violation of the Storm Water Permit's Effluent  
11 Limitations and Receiving Water Limitations.

12 128. Plaintiff is informed and believes, and thereon alleges, that during and/or  
13 after every significant rain event exceeding either a 0.75-inch total storm event or a  
14 continuing 0.2-inch per hour storm event, or any other storm water or non-storm water  
15 discharge that has occurred at the Facility since April 13, 2018, through the present,  
16 Defendant has discharged and continues to discharge storm water and non-storm water  
17 from the Facility that contains concentrations of pollutants at levels that violate the  
18 prohibitions and limitations set forth in the Storm Water Permit, the technology-based  
19 Effluent Limitations, the Benchmarks, CTR, and/or the WQS.

20 **F. Defendant's Violations of the Storm Water Permit's Sampling,**  
21 **Reporting, and Monitoring Implementation Plan Requirements**

22 129. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
23 and continues to fail to develop an adequate Monitoring Implementation Plan ("MIP") for  
24 industrial operations at the Facility that complies with Section XI of the Storm Water  
25 Permit.

26 130. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
27 and continues to fail to revise the MIP for the Facility as necessary to ensure compliance  
28 with the Storm Water Permit in violation of Section XI of the Storm Water Permit.

1           131. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
2 and continues to fail to implement the MIP at the Facility, in violation of Section XI of  
3 the Storm Water Permit.

4           132. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
5 and continues to fail to collect or analyze sufficient storm water samples at the Facility, in  
6 violation of Section XI of the Storm Water Permit.

7           133. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
8 and continues to fail to adequately revise the MIP for the Facility as necessary to ensure  
9 compliance with the Storm Water Permit in violation of Section XI of the Storm Water  
10 Permit.

11           134. Plaintiff is informed and believes, and thereon alleges, that the  
12 Owners/Operators of the Facility consistently fail to prepare, implement, and report on its  
13 Water Quality Based Corrective Actions as required by the Storm Water Permit.

14           135. Plaintiff is informed and believes, and thereon alleges, that the  
15 Owners/Operators of the Facility have consistently failed and continue to fail to report  
16 any noncompliance with the Storm Water Permit at the time that the Annual Report is  
17 submitted.

18           136. Plaintiff is informed and believes, and thereon alleges, that the  
19 Owners/Operators did not report their non-compliance as required by the Storm Water  
20 Permit.

21           137. Plaintiff is informed and believes, and thereon alleges, that the  
22 Owners/Operators of the Facility fail to collect sufficient storm water samples during  
23 QSEs.

24           138. Information available to Plaintiff is informed and believes, and thereon  
25 alleges, that the BMPs proffered as implemented in the Facility SWPPP are insufficient  
26 and ineffective in reducing pollutants to levels compliant with the Storm Water Permit  
27 and/or the CWA.

28           139. Plaintiff is informed and believes, and thereon alleges, that Defendant has

1 failed to submit accurate Annual Reports to the Regional Board for the past five reporting  
2 years in violation of Section XVI of the Storm Water Permit.

3 140. Plaintiff is informed and believes, and thereon alleges, that the Facility  
4 entered ERA Level 1 status during the 2020-2021 reporting year for TSS, iron, and N+N.

5 141. Plaintiff is informed and believes, and thereon alleges, that in 2021-2022 and  
6 in every year thereafter, the Facility exceeded NAL for iron, thereby entering ERA Level  
7 2 status.

8 142. Plaintiff is informed and believes, and thereon alleges, that the Facility  
9 entered ERA Level 1 status during the 2021-2022 reporting year for aluminum.

10 143. Plaintiff is informed and believes, and thereon alleges, that based on  
11 currently available data for the 2022-2023 reporting year, the Facility will enter ERA  
12 Level 2 status for aluminum and will remain at ERA Level 2 for iron.

13 144. Plaintiff is informed and believes, and thereon alleges, that since at least  
14 2020, the Owners/Operators have never submitted an ERA Level 1 or Level 2 report or  
15 revised the SWPPP accordingly in violation of the General Permit.

16 145. Plaintiff is informed and believes, and thereon alleges, the Owners/Operators  
17 have failed to analyze stormwater samples for chemical oxygen demand or biological  
18 oxygen demand despite the fact that they are listed in the SWPPP's pollutant source  
19 assessment in violation of the General Permit. General Permit Section XI.B.6.

20 146. Plaintiff is informed and believes, and thereon alleges, that the  
21 Owners/Operators have failed to analyze stormwater samples for lead despite the fact that  
22 Reach 2 of the San Gabriel River, into which the Facility discharges, is impaired for lead  
23 in violation of the General Permit. General Permit Section XI.B.6.

## 24 **VI. CLAIMS FOR RELIEF**

### 25 **FIRST CAUSE OF ACTION**

#### 26 **Discharges of Contaminated Storm Water in Violation of** 27 **the Storm Water Permit's Effluent Limitations and the Clean Water Act.** 28 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

147. Plaintiff incorporates the allegations contained in the above paragraphs as

1 though fully set forth herein.

2 148. Plaintiff is informed and believes, and thereon alleges, that Defendant failed  
3 and continues to fail to reduce or prevent pollutants associated with industrial activities at  
4 the Facility from discharging from the Facility through implementation of BMPs that  
5 achieve BAT/BCT.

6 149. Plaintiff is informed and believes, and thereon alleges, that discharges of  
7 storm water containing levels of pollutants that do not achieve compliance with  
8 BAT/BCT standards from the Facility occur every time storm water discharges from the  
9 Facility. Defendant's failure to develop and/or implement BMPs that achieve the  
10 pollutant discharge reductions attainable via BAT or BCT at the Facility is a violation of  
11 the Storm Water Permit and the CWA. *See* Storm Water Permit, Sections I(D)(Finding  
12 32)V(A); 33 U.S.C. § 1311(b).

13 150. The Owners/Operators violate and will continue to violate the Storm Water  
14 Permit's Effluent Limitations each and every time storm water containing levels of  
15 pollutants that do not achieve BAT/BCT standards discharges from the Facility.

16 151. Plaintiff is informed and believes, and thereon alleges, that the  
17 Owners'/Operators' violations of Effluent Limitations of the Storm Water Permit and the  
18 CWA are ongoing and continuous.

19 152. Each day, since at least April 13, 2018, that the Owners/Operators discharge  
20 storm water containing pollutants in violation of the Storm Water Permit is a separate and  
21 distinct violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a).

22 153. By committing the acts and omissions alleged above, the Owners/Operators  
23 are subject to an assessment of civil penalties for each and every violation of the CWA  
24 occurring from April 13, 2018 to the present, pursuant to Sections 309(d) and 505 of the  
25 CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

26 154. An action for injunctive relief is authorized by CWA Section 505(a), 33  
27 U.S.C. § 1365(a). Continuing commission of the acts and omissions alleged above would  
28 irreparably harm Plaintiff, Plaintiff's members, and the citizens of the State of California,



1 for which harm Plaintiff have no plain, speedy, or adequate remedy at law.

2 155. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
3 an actual controversy exists as to the rights and other legal relations of the Parties.

4 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
5 hereafter.

6 **SECOND CAUSE OF ACTION**

7 **Defendant's Discharges of Contaminated Storm Water in Violation of**  
8 **the Storm Water Permit's Receiving Water Limitations and the Clean Water Act.**  
9 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

10 156. Plaintiff incorporates the allegations contained in the above paragraphs as  
11 though fully set forth herein.

12 157. Plaintiff is informed and believes, and thereon alleges, that discharges of  
13 storm water containing levels of pollutants that adversely impact human health and/or the  
14 environment from the Facility occur each time storm water discharges from the Facility.

15 158. Plaintiff is informed and believes, and thereon alleges, that storm water  
16 containing levels of pollutants that cause or contribute to exceedances of water quality  
17 standards, including but not limited to standards set forth in the applicable Basin Plan,  
18 has discharged and continues to discharge from the Facility each time storm water  
19 discharges from the Facility.

20 159. The Owners/Operators violate and will continue to violate the Storm Water  
21 Permit's Receiving Water Limitations each and every time storm water containing levels  
22 of pollutants that adversely impact human health and/or the environment, and that cause  
23 or contribute to exceedances of WQS discharges from the Facility.

24 160. Plaintiff is informed and believes, and thereon alleges, that the  
25 Owners'/Operators' violations of Receiving Water Limitations of the Storm Water Permit  
26 and the CWA are ongoing and continuous.

27 161. Each and every violation of the Storm Water Permits' Receiving Water  
28 Limitations is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §  
1311(a).



1 169. The Owners/Operators have been in violation of the Storm Water Permit at  
2 the Facility every day from April 13, 2018, to the present.

3 170. The Owners'/Operators' violations of the Storm Water Permit and the CWA  
4 at the Facility are ongoing and continuous.

5 171. The Owners/Operators will continue to be in violation of the Storm Water  
6 Permit and the CWA each and every day the Owners/Operators fail to adequately  
7 develop, implement, and/or revise the SWPPP for the Facility.

8 172. Each and every violation of the Storm Water Permit's SWPPP requirements  
9 at the Facility is a separate and distinct violation of the CWA.

10 173. By committing the acts and omissions alleged above, the Owners/Operators  
11 are subject to an assessment of civil penalties for each and every violation of the CWA  
12 occurring from April 13, 2018, to the present, pursuant to Sections 309(d) and 505 of the  
13 CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

14 174. An action for injunctive relief under the CWA is authorized by Section  
15 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
16 omissions alleged above would irreparably harm Plaintiff, their members, and the citizens  
17 of the State of California, for which harm they have no plain, speedy, or adequate remedy  
18 at law.

19 175. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
20 an actual controversy exists as to the rights and other legal relations of the Parties.

21 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
22 hereafter.

23 **FOURTH CAUSE OF ACTION**

24 **Defendant's Failure to Adequately Develop, Implement, and/or**  
25 **Revise a Monitoring and Reporting Plan in Violation of**  
26 **the Storm Water Permit and the Clean Water Act.**  
**U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

27 176. Plaintiff incorporates the allegations contained in the above paragraphs as  
28 though fully set forth herein.

1           177. Plaintiff is informed and believes, and thereon alleges, that the  
2 Owners/Operators have failed and continue to fail to develop an adequate MIP for the  
3 Facility, in violation of the Storm Water Permit.

4           178. Plaintiff is informed and believes, and thereon alleges, that the  
5 Owners/Operators have failed and continue to fail to adequately implement an MIP for  
6 the Facility, in violation of the Storm Water Permit.

7           179. Plaintiff is informed and believes, and thereon alleges, that the  
8 Owners/Operators have failed and continue to fail to adequately revise an MIP for the  
9 Facility, in violation of the Storm Water Permit.

10          180. The Owners/Operators have been in violation of the Storm Water Permit's  
11 monitoring requirements at the Facility every day from April 13, 2018 to the present.

12          181. The Owners'/Operators' violations of its Storm Water Permit's monitoring  
13 requirements and the CWA at the Facility are ongoing and continuous.

14          182. The Owners/Operators will continue to be in violation of Section XI of the  
15 Storm Water Permit, and the CWA each and every day they fail to adequately develop,  
16 implement, and/or revise an MIP for the Facility.

17          183. Each and every violation of the Storm Water Permit's MIP requirements at  
18 the Facility is a separate and distinct violation of the CWA.

19          184. By committing the acts and omissions alleged above, the Owners/Operators  
20 are subject to an assessment of civil penalties for each and every violation of the CWA  
21 occurring from April 13, 2018, to the present, pursuant to Sections 309(d) and 505 of the  
22 CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

23          185. An action for injunctive relief under the CWA is authorized by Section  
24 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
25 omissions alleged above would irreparably harm Plaintiff, their members, and the citizens  
26 of the State of California, for which harm they have no plain, speedy, or adequate remedy  
27 at law.

28          186. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because

1 an actual controversy exists as to the rights and other legal relations of the Parties.

2 WHEREFORE, Plaintiff prays for judgment against Defendant as set forth hereafter.

3 **FIFTH CAUSE OF ACTION**

4 **Defendant's Failure to Report as Required by the Storm Water**  
5 **Permit in Violation of the Storm Water Permit and the**  
6 **Clean Water Act.**

7 **33 U.S.C. §§ 1311(a), 1342, 1365(a) and 1365(f)**

8 187. Plaintiff incorporates the allegations contained in the above paragraphs as  
9 though fully set forth herein.

10 188. Section XVI of the Storm Water Permit requires a permittee to submit an  
11 Annual Report to the Regional Board by July 1 of each year. Section XVI of the Permit  
12 requires that the Annual Report include a compliance checklist that indicates that a  
13 discharger complies with and has addressed all applicable requirements of the Permit, an  
14 affirmation of visual observations and sampling results, an identification and explanation  
15 of any non-compliance, an identification of all revisions made to the SWPPP within the  
16 reporting year, and the date of the Annual Evaluation. Storm Water Permit, Section XVI.  
17 Laboratory reports of sample analysis, the annual comprehensive site compliance  
18 evaluation report, an explanation of why a permittee did not implement any activities  
19 required are also reporting requirements throughout the reporting year and are typically  
20 uploaded into the SMARTS portal.

21 189. The Permit also requires a permittee whose discharges violate the Storm  
22 Water Permit's Receiving Water Limitations or water quality standards, such as, NALs,  
23 TMDLs, TMDL-Specific Numeric Action Levels and NELs to implement additional  
24 BMPs or other control measures that are tailored to that facility in order to attain  
25 compliance with the receiving water limitation. A Discharger that is notified by a  
26 Regional Board or who determines the discharge is causing or contributing to an  
27 exceedance of a water quality standard must comply with the Water Quality Based  
28 Corrective Actions in Section XX(B) of the Permit and report to the Regional Board  
regarding same. *See* Storm Water Permit, Section XX(B).

1           190. Plaintiff is informed and believes, and thereon alleges, that the  
2 Owners/Operators have failed to accurately report their non-compliance with the Storm  
3 Water Permit and correctly report storm water sampling analysis compliance in the  
4 Facility's Annual Reports. As such, Defendant is in daily violation of the Storm Water  
5 Permit.

6           191. Further, Defendant have repeatedly failed to submit required ERA Level 1  
7 and/or Level 2 Reports, despite entering into those levels for various constituents. As  
8 such, Defendant is in daily violation of the Storm Water Permit Section XII.

9           192. The Facility Owners/Operators have been in violation of Sections XII, XVI  
10 and XX of the Storm Water Permit since at least April 13, 2018.

11           193. The Owners'/Operators' violations of the reporting requirements of the  
12 Storm Water Permit and the CWA are ongoing and continuous.

13           194. By committing the acts and omissions alleged above, the Owners/Operators  
14 of the Facility are subject to an assessment of civil penalties for each and every violation  
15 of the CWA occurring from April 13, 2018, to the present, pursuant to Sections 309(d)  
16 and 505 of the CWA, 33 U.S.C. §§ 1319(d), 1365, and 40 C.F.R. § 19.4.

17           195. An action for injunctive relief under the CWA is authorized by Section  
18 505(a) of the CWA, 33 U.S.C. § 1365(a). Continuing commission of the acts and  
19 omissions alleged above would irreparably harm Plaintiff, its members, and the citizens  
20 of the State of California, for which harm they have no plain, speedy, or adequate remedy  
21 at law.

22           196. An action for declaratory relief is authorized by 28 U.S.C. § 2201(a) because  
23 an actual controversy exists as to the rights and other legal relations of the Parties.

24           WHEREFORE, Plaintiff prays for judgment against Defendant as set forth  
25 hereafter.

26 **VII. RELIEF REQUESTED**

27           197. Wherefore, Plaintiff respectfully requests that this Court grant the following  
28 relief:

1           a.     A Court order declaring Defendant to have violated and to be in  
2 violation of Sections 301(a) and (b) and 402 of the Clean Water Act, 33 U.S.C. §§  
3 1311(a) and (b) and 1342, for its unlawful discharges of pollutants from the Facility in  
4 violation of a permit issued pursuant to Section 402(p) of the CWA, 33 U.S.C. §  
5 1342(p), for failing to meet effluent standards limitations which include BAT/BCT  
6 requirements, and for failing to comply with the substantive and procedural  
7 requirements of the Storm Water Permit and the CWA;

8           b.     A Court order enjoining Defendant from violating the substantive and  
9 procedural requirements of the Storm Water Permit and Sections 301(a) and 402 of  
10 the CWA, 33 U.S.C. §§ 1311(a), 1342;

11           c.     A Court order assessing civil monetary penalties for each violation of  
12 the CWA occurring on or after November 2, 2015, of \$59,937 per day, as permitted  
13 by 33 U.S.C. § 1319(d) and Adjustment of Civil Monetary Penalties for Inflation, 40  
14 C.F.R. § 19.4;

15           d.     A Court order awarding Plaintiff its reasonable costs of suit, including  
16 attorney, witness, expert, and consultant fees, as permitted by Section 505(d) of the  
17 Clean Water Act, 33 U.S.C. § 1365(d); and

18           e.     Any other relief as this Court may deem appropriate.  
19  
20  
21

22 Dated: June 16, 2023

Respectfully submitted,

24 /s/ Jason R. Flanders

25 Jason R. Flanders

26 James T. Brett

AQUA TERRA AERIS LAW GROUP

27 Attorneys for Plaintiff

28 LOS ANGELES WATERKEEPER